

STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT COURT
COUNTY OF SANTA FE

ALEXANDER HANNA and YON HUDSON,

Petitioners,

v.

No. D-0101-CV-2013-_____

GERALDINE SALAZAR, in her official
capacity as Santa Fe County Clerk,

Respondent.

VERIFIED PETITION FOR WRIT OF MANDAMUS

COME NOW Alexander Hanna and Yon Hudson, by and through counsel, Egolf, Ferlic, and Day, LLC, to petition this Court for a writ of mandamus pursuant to NMSA 1978, § 44-2-4 (1884) to compel the Santa Fe County Clerk to perform her non-discretionary duty to issue them a marriage license pursuant to NMSA 1978, § 40-1-10 (1905) because they have met the statutory requirements for issuance.

JURISDICTION & VENUE

1. The unlawful acts described herein were committed in Santa Fe County, New Mexico.
2. Jurisdiction is proper pursuant to Article VI, Section 13 of the New Mexico Constitution and NMSA 1978 § 44-2-3 (1884).
3. Venue is proper pursuant to NMSA 1978, § 38-3-1 (1988).

PARTIES

4. Petitioner Alexander Hanna is a resident of Santa Fe County who desires to marry his long-term partner, Yon Hudson, in Santa Fe County, and whom is beneficially interested in this matter.

5. Petitioner Yon Hudson is a resident of Santa Fe County who desires to marry his long-term partner, Alexander Hanna, in Santa Fe County, and whom is beneficially interested in this matter.

6. Respondent Geraldine Salazar is the County Clerk for Santa Fe County.

ALLEGATIONS

7. The office of the County Clerk for each county in the state of New Mexico is established by Article IV, Section 22 of the New Mexico Constitution.

8. County Clerks are invested with the sole authority to issue marriage licenses in New Mexico. NMSA 1978 § 40-1-10.

9. Couples are required to have marriage licenses before getting married in New Mexico. *Id.*; § 40-1-14.

10. New Mexico defines marriage as: “a civil contract, for which the consent of the contracting parties, capable in law of contracting, is essential.” § 40-1-1.

11. New Mexico’s definition of marriage does not contain any limitation or requirement as to the gender of the parties. *Id.*

12. The marriages prohibited by statute in this state are those between relatives to a close degree and with a minor. *Id.* at § 40-1-9.

13. County Clerks have a non-discretionary duty to issue marriage licenses to applicants qualified under statute, i.e. those able to contract under the law, not related to a

specified degree, and at least eighteen years of age or with parental permission. *Id.* At § 40-1-1; § 40-1-9.

14. County Clerks are subject to removal if they do not issue marriage licenses in accordance with statute. *Id.* at § 40-1-10; § 40-1-13.

15. Petitioners applied for a marriage license to marry one another at the office of the Santa Fe County Clerk on June 6, 2013.

16. Petitioners are able to contract under the law, are not related to a specified degree, and are both at least eighteen years of age. *Id.* at § 40-1-1; § 40-1-9.

17. Respondent, or an agent of Respondent, denied Petitioners a marriage license because they are both male.

18. Respondent denied Petitioners a marriage license on basis that is not supported by the law. *See Id.* at § 40-1-1; § 40-1-9.

19. Respondent acted outside her statutory authority to deny Petitioners their marriage license. *See Id.* at § 40-1-1; § 40-1-9.

20. Petitioners have a clear legal right to a marriage license in Santa Fe County.

21. In addition to violating state law, the decision to deny the petitioners a marriage license violates the Constitution of the State of New Mexico, which states that “no person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws. Equality of rights under law shall not be denied on account of the sex of any person.” N.M. Const. Art. II, § 18. In denying a marriage license to the Petitioners, the Respondent has denied them equal protection under the New Mexico Constitution as well as due process.

22. New Mexico courts have already recognized the legality of same-sex marriages performed in New Mexico. The First Judicial District Court heard and ruled on a divorce

petition in 2010 brought by a member of same-sex marriage that had been performed in New Mexico pursuant to a marriage license issued by a New Mexico county clerk.

23. A writ of mandamus is properly issued “to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station.” NMSA 1978 § 44-2-4.

24. “Mandamus is appropriate to compel the performance of an affirmative act by another where the duty to perform the act is clearly enjoined by law and where there is no other plain, speedy and adequate remedy in the ordinary course of law.” *West v. San Jon Bd. of Educ.*, 2003-NMCA-130, ¶ 9, 134 N.M. 498, 79 P.3d 842 (internal quotation marks and citation omitted).

25. A ministerial duty is one that the official is “required to perform by direction of law upon a given state of facts being shown to exist, regardless of his own opinion as to the propriety or impropriety of doing the act in the particular case.” *Hart v. City of Albuquerque*, 1999-NMCA-043, ¶ 17, 126 N.M. 753, 975 P.2d 366 (internal quotation marks and citations omitted).

26. Petitioners have no plain, adequate, and speedy remedy in the ordinary course of the law.

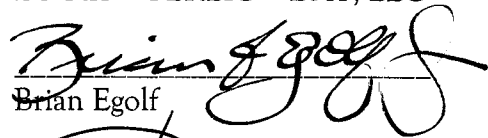
PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that the Court:

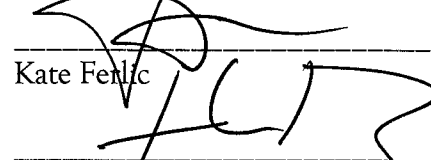
- A. Issue a writ of mandamus requiring the Santa Fe County Clerk to issue them a marriage license;
- B. Award Petitioners their damages, costs, reasonable attorney’s fees and disbursements pursuant to Section 44-2-12 (1978); and
- C. Award any such other further relief that is just and proper.

Respectfully submitted,

EGOLF + FERLIC + DAY, LLC



Brian Egolf



Kate Ferlic



John Day

and

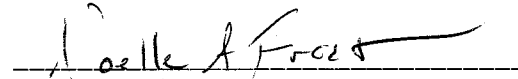
Jamison Barkley
128 Grant Avenue, Third Floor
Santa Fe, NM 87501
t (505) 986-9641
f (505) 214-2005
www.EgolfLaw.com

VERIFICATION

I swear that the foregoing is true and correct to the best of my knowledge.

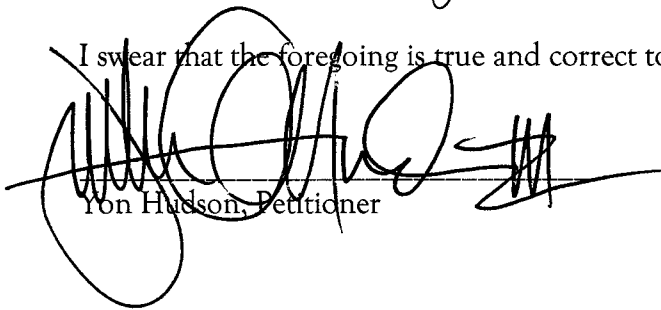

Alexander Hanna, Petitioner

SUBSCRIBED AND SWORN BEFORE ME this 6 day of June, 2013.

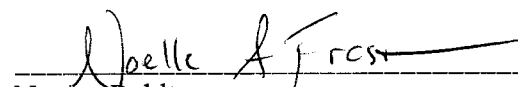

Notary Public

My commission expires: August 27, 2016

I swear that the foregoing is true and correct to the best of my knowledge.


Yon Hudson, Petitioner

SUBSCRIBED AND SWORN BEFORE ME this 6 day of June, 2013.


Notary Public

My commission expires: August 27, 2016